DOCUMENT RESUME

ED 093 081 EA 006 280

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TITLE	Child Labor Laws in Mississippi.
SPONS AGENCY	Governor's Office of Education and Training, Jackson, Miss.
PUB DATE	Jul 74
NOTE	31p.
EDRS PRICE	MF-$0.75 HC-$1.85 PLUS POSTAGE
DESCRIPTORS	*Child Labor Laws; *Child Welfare; *Court Cases; *State Legislation; Student School Relationship
IDENTIFIERS	*Mississippi

ABSTRACT

Child labor laws have not attracted much attention in recent years. Much of the basic legislation and the case law dates from the early part of the 20th century. This paper discusses the Mississippi statutory law on the subject, compares that law with legislation in five other States, and discusses case law in Mississippi and in other States. Several discussions address themselves to implications for the employment of children during the school year by schools and school districts, as well as by outside employers. The author also makes recommendations for changing Mississippi laws. (Author/JF)

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CHILD LABOR LAWS IN MISSISSIPPI

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Ronald Partridge, Assistant Professor of Educational Administration, and George Lyles, student in the School of Law, both of The University of Mississippi.

University, Mississippi
July, 1974

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Child labor laws have not attracted much attention in recent years. Much of the basic legislation and much of the case law dates from the early part of the Twentieth Century.

Statutory Law

Mississippi. The basic child labor laws of Mississippi date from the first three dqcades of the twentieth century. Section 71-1-17 of the Mississippi Code, 1972 provides that

> No boy or girl under the age of fourteen years shall be employed or permitted to work in any mill, cannery, workshop, factory or manufacturing establishment within this state.

Section 71-1-19 provides that child labor shall be in accord with school attendance as follows:

> It shall be unlawful for any person, firm or corporation to employ, detain, or permit to work in any mill, cannery, workshop, factory, or manufacturing establishment in this state any child under the age of fourteen years, or any child over the age of fourteen years and under the age of sixteen years, unless such child has complied with, or is complying with, the compulsory school attendance law. (Note: Mississippi now has no compulsory school attendance law.) Such employer shall require such child to present the affidavit of the parent or guardian, or person standing in parental relation to such child, and the certificate of the superintendent or principal of the school of the district

> in which such child or children reside or in which they last attended school, stating the place and date of birth of such child, the last school attendance of such child, the grade of study pursued, the name of the school, and the name of the teacher in charge. The employer shall preserve such affidavit and keep a complete register of all such affidavits, showing all the facts contained therein.

Section 71-1-21 provides that

> No boy or girl over fourteen years of age and under sixteen years shall be permitted to work in any mill, cannery, workshop, factory, or manufacturing establishment more than eight hours in one day, or more than forty-four hours in any one week, or be employed or detained in any such establishment between the hours of 7 p.m. and 6 a.m. It shall be unlawful for any person, firm, or corporation engaged in such business to work employees who are over sixteen years old more than ten hours per day except in case of emergency, or where the public necessity requires. Employees over sixteen years old may work not more than thirty minutes additional time each day for the first five days of the week, the additional time so worked to be deducted from the last day of such work. Persons who work at nights only may work eleven hours and fifteen minutes for the first five nights of the week, beginning Monday night, and three hours and forty-five minutes Saturday night, but sixty hours shall constitute a full week's work for such employees.
>
> This section shall not apply to railroads or their employees, to other public service corporations, or to persons, firms, or corporations engaged in handling or converting perishable agricultural products in season and who work adult male labor only.

The enforcement of the law is given in Section 71-1-23:

> It shall be the special duty of the sheriff of the county in which the mill, cannery, workshop, factory, or manufacturing establishment employing child labor is located, to visit, at least once each month, such mill, cannery, workshop, factory, or manufacturing establishment to see to the enforcement of this chapter.

The county health officer has the responsibility to inspect

places of employment, according to section 71-1-25.

> It shall be the duty of the county health officer to visit, without notice of his intention to do so, all mills, canneries, workshops, factories, or manufacturing establishments employing child labor within his county at least twice each year, or oftener if requested by the sheriff, and to promptly report to the sheriff any unsanitary condition of the premises, any child or children afflicted with infectious, contagious or communicable diseases, or whose physical condition renders such child or children incapacitated to perform the work required of them. The sheriff shall promptly remove such child or children from such mill, cannery, workshop, factory or manufacturing establishment, and order the premises put in sanitary condition. The judgement of the county health officer as to the physical condition of the children and the sanitary condition of the premises shall be final and conclusive.

The violation of orders constitutes a misdemeanor, according to Section 71-1-27.

> Any officer, manager, or superintendent of any mills, cannery, workshop, factory, or manufacturing establishment in which child labor is employed who shall fail or refuse to give true and correct information demanded of him by any officer hereinbefore directed to inspect such mill, cannery, workshop, factory, or manufacturing establishment, or who shall fail or refuse to obey any lawful order of the sheriff or health officer of the county in which said mill, cannery, workshop, factory, or manufacturing establishment is located for carrying out the purpose of this chapter, shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than ten dollars nor more than one hundred dollars.

The violation of the provisions of the law also constitutes a misdemeanor according to Section 71-1-29.

> Any person, firm, or corporation, or the superintendent or any officer of the mill, cannery, workshop, factory, or manufacturing establishment employing any child, or permitting any child to be employed by or to work in, or to be detained in any mill, cannery, workshop,

> factory, or manufacturing establishment in this state contrary to law shall be guilty of a misdemeanor and upon conviction, shall be fined not less than fifty dollars nor more than one hundred dollars, or may be sentenced to the county jail for not less than ten days nor more than sixty days, or both such fine and imprisonment.

Certain canneries are excepted from the provisions of the law according to Section 71-1-31.

> The provisions of sections 71-1-17 to 71-1-29 shall not apply to fruit or vegetable canneries.

Alabama. The basic age for work in Alabama is 16, although there are specific exemptions. Children between 14 and 15 may be employed outside of school hours and days except in manufacturing or mechanical establishments and canneries. However, operation of machinery for the processing of agricultural products is considered "agricultural labor." (Code of Alabama, Title 26, Section 343)

The hours of work are set forth such that no child under 16, except for agricultural or domestic service, shall work for more than 6 days or 40 hours in any week, nor for more than 18 hours in one day, nor before 7 a.m. or after 8 p.m. The presence of a child under 16 in an establishment is prima facie evidence of his employment in the establishment. (Section 344)

Persons under 18 shall not work in pool or billiard rooms. Persons under 21 shall not work around alcoholic beverages, except for (A) those over 16 who may work as busboys, dishwashers, or janitors; and (B) members of the

immediate family of the owner or operator, provided that they do not handle the alcoholic beverages. (Section 347)

Numerous places where children under 16 cannot work are enumerated in the Alabama Law. These include around acids, paints, and lead; around soldering and welding; around dust; around dyes; around poisonous gases; around lye; on scaffolding; in heavy work in the building trades; in tunnels or excavations; in the processing of tobacco; in operating cars and trucks; in bowling alleys; as firefighters; on the stage of a theater or concert hall (except that children at least 14 may work as ushers or at concession stands); or in any other "place or occupation which the state board of health may declare dangerous to life or limb or injurious to the health of children under sixteen years of age." (Section 349)

A child under 16 may not work during school hours unless he has completed the course of study required for secondary schools. Children of 14 and 15 may obtain permission from the superintendent of education and the chief child labor inspector to work in non-hazardous occupations, but the hours restriction remains for them. Agricultural and domestic service workers are specifically exempted from the provisions of this section. (Section 354)

The Alabama law provides for the issuance of employment certificates. When one is received, boys between 12 and

14 may work in business offices, mercantile establishments, or dairies when schools are not in session. Certificates are not valid for employment of more than four hours in any school day or 28 hours in any school week. (Section 357)

Boys under 12 and girls under 18 shall not sell or distribute items on the streets; however, boys over 10 may distribute newspapers and boys over 12 may work as boot-blacks and as caddies. (Section 362)

California. In California, the basic age for work is 16, with a number of exceptions. The California law prohibits minors under 16 from working around machinery, specifically including woodworking machinery; fiber, leather, and laundry machinery; presses and cutting machines; paper-processing machines; dough machines; and various other types of machinery. (California Labor Code, Privileges and Restrictions, Sections 1290-1293)

Certain places of employment are prohibited to minors under 16, including on railroads; on boats; in places using or having acids, dyes, dust, and lye; on scaffolding; in heavy work in the building trades; in mines and in places processing mine products; in places handling tobacco processing; in operating cars and trucks; in bowling alleys or in pool or billiard rooms; or "in any occupation dangerous to the life or limb, or injurious to the health or morals of such minor." (Section 1294)

Minors under 18 shall not work more than eight hours out of 24, nor more than 48 hours in one week, nor before 5 a.m. or after 10 p.m. (Section 1391)

Massachusetts. The basic age for employment in Massachusetts is also 16. It is prohibited for children under 16 to work "in connection with any mercantile establishment, barber shop, bootblack stand or establishment, stable, elsewhere than on a farm, garage, brick or lumber yard, telephone exchange, telegraph or messenger office, place of amusement, or in the construction or repair of buildings, or in any radio broadcasting station except as talent." Children cannot work for wages while schools are in session, and they cannot work before 6:30 a.m. or after 6:00 p.m. unless they are caddies. (Code of Massachusetts, Labor and Industries, Chapter 149, Section 60)

Under restricted conditions, children can take part in theatrical productions and fashion shows. Children between 14 and 16 may do volunteer work in hospitals, but not after 6:00 p.m. (Ibid.)

Children under 16 are prohibited from operating, repairing, or being near certain machines; on scaffolding; in heavy work in the building trades; in processing tobacco; in a tunnel; in a public bowling alley; in a pool or billiard room; or on a moving motor vehicle. (Section 61)

Minors under 18 are prohibited from working in or

around blast furnaces and hoisting machines; in maintaining moving machinery; in operating polishing and buffing wheels; in working on railroads and boats; in operating motor vehicles; in working around explosives and phosphorous; in the processing of alcoholic beverages; in any place where alcoholic beverages are sold; at a height of over 30 feet from the floor or ground; and in the operation of any elevator other than a self-service elevator. They may work in drug stores and, if they have a license, in the operation of farm machinery. (Section 62)

Minors of 14 and over may operate home gardening power tools. If they are over 16 they may work in agricultural occupations if they are enrolled in vocational agriculture. (Section 62A)

The Department of Labor may, after a hearing, determine that certain occupations are dangerous or sufficiently injurious to the health or morals of minors under 16 or 18 and justify their exclusion from these occupations. (Section 63)

Minors may not work in or about or in connection with any saloon or bar room. "No person shall knowingly take or send any such minor or cause or permit him to be sent to any disorderly house or house of prostitution or assignation or immoral place of resort or amusement." (Section 64)

Minors under 16 may not work more than six days in any one week, nor more than 48 hours in any week, nor more than eight hours in any one day. In general, they may not work before 6:30 a.m. or after 6:00 p.m. If the work day is divided, it cannot exceed more than 9 hours, and if the minor is in a continuation school or a particular course of instruction, that time shall be reckoned as a part of the time he is permitted to work. (Section 65)

Children under 18 shall not work before 6:00 a.m. or after 10 p.m. except that they may be employed in telephone and telegraph offices until 11:00 p.m. Boys and girls between 16 and 18 may work in restaurants until 12 midnight on Fridays and Saturdays and during school vacation periods. (Section 66)

In general, boys under 18 and girls under 21 cannot work more than six days a week nor more than 48 hours in a week nor more than 9 hours in a day. If the work is not continuous, the total period cannot exceed ten consecutive hours. (Section 67)

Missouri. In Missouri a child under 14 is not permitted to work; however, a child between 14 and 16 may be employed if he has a work certificate, other than during school hours during the school term. (Revised Statutes of Missouri, Labor-Industrial Relations, Sections 294.021 and 294.024)

Those children under 16 shall not work more than eight hours a day, nor more than six days, nor 40 hours a week and should not work before 7:00 a.m. or after 10:00 p.m. Those in school may not work later than 7:00 p.m. on the night before a school day. (Section 294.030)

Minors under 16 are not permitted to work in certain occupations, including in connection with power machinery; in the maintenance of machinery; on scaffolding; in a mine or quarry; in stone cutting or polishing; around explosives; in the operation of a motor vehicle; around heated metals; around machinery for metal shaping; in the operation of power woodworking machines; in saw and other mills; in the operation of elevators and other lifting machines; in occupations involving radioactive substances; as a bellhop in a pool room, billiard hall or bowling alley; in any place where alcoholic beverages are manufactured or sold; or in any "other occupation dangerous to the life, health or limb, or injurious to the health or morals of children under the age of sixteen." (Section 294.040)

New York. The state of New York has specific laws governing the employment of various age groups. (New York Labor Law)

Minors under 14 may not be employed except as a child performer, a child model, or as a newspaper carrier. Those over 12 may obtain farm work permits for certain agricultural work. (Section 130)

Minors 14 or 15 years of age may obtain a work permit for work other than in a factory. If such a minor is not required to be in school he does not need a permit to work as a caddy, as a baby sitter, in yard work and household chores that do not involve power machinery, on a farm, or in other outdoor work not for business. These minors may work as a child performer or child model, as a newspaper carrier, on a farm, and in a school cafeteria. They may work in offices, shops, and stores other than around machinery or chemicals. (Section 131)

Minors 16 or 17 may obtain a work permit. Such a permit is not needed to work on a farm; as a caddy; as a baby sitter; in yard or household work; or for their parents outdoors not for business. Minors 16 or 17 may work as newspaper carriers, in school cafeterias, and as child models. No permit is needed for work for an institution of higher learning if the minor is enrolled there. (Section 132)

Minors under 16 may not work in certain occupations. These include in the painting and exterior cleaning of buildings; in a factory; around certain processing machinery; and in mental institutions. Girls under 16 shall not be employed in jobs which require constant standing. (Section 133)

Minors under 18 may not work in certain occupations. These include the operation of elevators, except that boys over sixteen may operate automatic elevators; around

explosives; around polishing or buffing wheels; in penal or correctional institutions; in the maintenance of machinery; around paints, leads, or acids; in the operation of steam boilers; in construction work; in painting or exterior cleaning from an elevated surface; around radiation or dust; in lumbering occupations; in mines or quarries; around power saws or shears; in a meat-packing, slaughter, or rendering plant; in the operation of hoisting apparatus; and in the manufacture of brick and tile products. Exceptions are made for those involved as a helper in an apprenticeship program, as a student-learner, and in a work-training program. (Ibid.)

Girls under 21 may not be employed in cleaning machinery; as a conductor or guard on a railway or subway; or as a messenger for a telegraph or messenger company. (Ibid.)

The Board of Standards and Appeals may adopt rules prohibiting or regulating the employment of minors under 18, in addition to those occupations named in the laws. Farm labor is specifically exempt from the laws. (Ibid.)

Minors under 16, when school is in session, may not work more than three hours on a school day; eight hours on a non-school day; twenty-three hours a week; six days a week; or after 7:00 p.m. or before 7:00 a.m. (Section 170)

Minors who are 16, when school is in session, may

not work more than four hours on a school day; eight hours on a non-school day; 28 hours a week; or 6 days a week. Exceptions are made for newspaper carriers, farm labor, child performers, child models, and baby sitters. (Ibid.)

Minors under 16, when school is not in session, shall not work more than eight hours a day; six days a wekk; forty hours a week; after 7:00 p.m. or before 7:00 a.m., except for newspaper carriers, farm labor, child performers, child models, and baby sitters. (Section 171)

No boy 16 or 17, and no girl between 16 and 21 shall be employed in or in connection with a factory, hotel, restaurant, beauty parlor, mercantile establishment, or telephone answering service, or in the distribution or transmission of merchandise or articles more than six days or forty-eight hours per week or more than eight hours a day (with certain exceptions.) However, the provisions of this section do not apply to boys 16 or 17 employed in handling perishable products between June 15 and October 15; to girls between 18 and 21 employed in canning or preserving of perishable products or in "canning sauerkraut and in sauerkraut factories" during certain times; to work in certain seasonal resorts; to those employed as a singer or performer in a hotel or restaurant; to beauty parlors in small towns; to employment during Christmas and inventory periods; to females employed as writers or reporters in

newspaper offices, as licensed pharmacists, or in florist shops on certain days; to newspaper carriers; or to child models. (Section 172)

Girls between 16 and 21 are prohibited from working in certain establishments after 10:00 p.m. or before 6:00 a.m. (Section 173)

Boys 16 or 17 years old are prohibited from working in hotels and certain other establishments after midnight or before 6:00 a.m. However, this does not apply to singers or performers, employment in certain resort areas, writers or reporters in newspaper offices, licensed pharmacists, and newspaper carriers. (Ibid.)

Boys over 16 are exempt from the law if they are employed by an airline in the maintenance of aircraft as part of a work study or job trainee program. (Ibid.)

Women between 18 and 21 may be employed for not more than 10 hours a day; six days a week; or sixty hours a week in "canning sauerkraut and in sauerkraut canneries" between September 1 and December 1 and in certain other canning establishments between June 15 and October 15. (Section 174)

Except for hotels and restaurants, women between 18 and 21 may not be employed in the care or operation of an elevator more than eight hours a day; six days a week; 48 hours a week; after 10:00 p.m. or before 6:00 a.m. (Section 175)

Children between 16 and 21 shall not be employed as a messenger before 5:00 a.m. or after 10:00 p.m. (Section 176)

The Commissioner of Labor may issue a permit authorizing the employment of a woman over 18 in excess of the maximum hours and nightwork provisions under certain conditions. (Section 177)

Case Law

There are few major, recent cases involving child labor, either in Mississippi or elsewhere.

Mississippi. In one Mississippi case, it was found that the employment of a minor in violation of the law describing the age limit is negligence per se, and renders the employer liable for injury resulting from such employment. (1)

In several Mississippi cases, it was found that the state did have the right to regulate the employment of minors.

In one such case, the court found that (A) working employees in a manufacturing establishment for more than 10 hours in any one day constituted only one offense; (B) if, during the 10 hours, an employee is confined to the precincts of the establishment and charged with some responsibility for the operation of the machinery, he is employed; (C) the law applies even though the mill is

operated only about 5 months each year; (D) the corporation was engaged in "manufacturing"; and (E) the law applies only to those employees of a manufacturing establishment who compose the organized force and work with machinery, whose work supplements that of the machinery, and whose work must be performed at the same time as that of the machinery in order to keep the machinery in operation. (2)

In yet another case it was found that the law applies only to employees working with or around machinery, and does not apply to an employee unloading from cars lumber which other employees were taking to the planing machines. (3)

In another case, it was found that (A) the use of the same language in the Child Labor Statute and in the Hours of Labor Statute is a persuasive of legislative intent; (B) work in rolling billets down a ramp of a stave mill where the worker was in no way affected by machinery or by the manufacturing or operating part of the mill was not within the statute prohibiting child labor "in the mill or manufacturing establishment" so as to entitle a boy under 16 to recover for injuries sustained in such work. (4)

In another case, the fact that there was an employee 15 years old was held to be prima facie evidence of negligence contributing to an injury by showing that there was employment without the necessary affidavit. However, if

the negligence of the 15-year-old employee contributed to his injury, his damages should be reduced proportionately, even though he was employed through fraud. Since his injury was caused solely by his negligence, the employer was not liable. (5)

In another case, the court found that a 17-year-old boy had been employed in violation of the laws. He was employed in a cotton gin and, on the date that he sustained injuries in the scope and course of his employment, he had worked 12 hours a day for six days, approximately 72 hours of work. The court held that he was entitled to double compensation benefits for his injuries. (6)

Elsewhere. The following summary reports the general state of the case law governing child labor across the country. (7)

Acting to guard the general interest in youth's well-being, the state as parens patriae may prohibit the labor of children under designated ages. The supervision and control of child labor has always been regarded as within the authority of the state legislature. Statutes prohibiting child labor do not violate constitutional provision guaranteeing liberty of contract. Such a statute does not take liberty or property without due process of law, even though the statute is so construed by the courts that a violation of its provisions gives a right of action in behalf of an illegally employed minor if injured in the

course of such employment, even if the employer acted in good faith, relying upon the representation of the minor that he was over 16.

Child labor laws have been upheld in prohibiting all child labor under a certain age. It is also proper to enumerate various occupations in which child labor is prohibited, and statutes forbidding child labor in enumarated occupations are not unconstitutionally discriminatory in failing to include other occupations which may be deemed equally objectionable. Moreover, it is competent for the state to forbid the employment of children in certain callings merely because it believes such prohibition to be for their best interest, although the prohibited employment does not involve a direct danger to their morals, or to life or limb. Such legislation does not constitute an unlawful interference with the parents' control over the child. Child labor statutes have been upheld notwithstanding their limitation to employers of five or more persons and their exemption of domestic and agricultural industries.

The fixing of the age limit below which children shall not be employed at all or in certain enumerated industries rests in the judgement of the legislature, and will not be interfered with as long as the age fixed is not so high as to show clearly and beyond all question that such age limit is unreasonable. Child labor statutes may contain special provisions relating to those who are unable to read and

write English. The statutes may forbid the employment of such persons until they reach an age greater than that at which others are allowed to work. It is within the province of a legislature to authorize employment of minors on procurement of a permit from the duly constituted authorities.

A child labor statute forbidding the employment of children under a certain age has been held inapplicable to vocational training at a boys' vocational school to which certain boys are committed. A child who attends a free fresh-air camp operated by a charity has been held not the charity's "employee" under the child labor law because of his performing certain chores without compensation, such chores being reciprocated by other campers in the same age group. A child's stage performance has been held to consitutte "work" under a statute prohibiting the employment of children under 14 in theaters and concert halls, but a similar statute has been held inapplicable to casual performances by the students of an instructor in singing, acting, and dancing for practice rather than for compensation.

Under a statute providing that no child under 14 shall be hired out in any factory, the prohibition extends to all parties connected with the employment and includes the employer as well as the parent or guardian who hires the child out. A corporation may be held criminally liable for the employment of underage children. Moreover, under a

statute forbidding the operation of elevators by any person under a certain age, and providing a penalty for any person who shall violate the act, it has been held that the child himself is liable to punishment as well as the employer.

A factory superintendent has been held not criminally liable for the employment of a child under 16 years of age by a foreman or other employee contrary to the superintendent's express directions given in good faith. On the other hand, it has been held that an assistant factory superintendent with authority to employ and discharge employees is presumed to know that a minor is employed in the factory in violation of a statute forbidding the employment of children in factories.

State statutes prohibiting child labor in factories have been held constitutional notwithstanding their exemption of canning factories in certain counties. A factory or manufacturing establishment, within the meaning of a statute prohibiting the employment of child labor in such places, has been held to include a tobacco factory, a box factory, a sawmill, and a coal dock, but not a railroad yard, a tugboat, or a threshing machine on a farm.

A boy had been held employed in and about a factory, within the meaning of a statute forbidding the employment of children under 15 in or about any factory, where he

assisted a truck driver in delivering soda water and where as part of his job he had to enter a bottling works to get the soda water for the truck. But a boy employed in removing boards from a lumber pile about a quarter of a mile from a sawmill has been held not employed in a "manufacturing establishment," even though the boards were to be taken to the mill.

A state may constitutionally prohibit the employment of children in theaters or concert halls or the exhibition or employment of girls under a certain age in theatrical exhibitions. A statute forbidding the employment of children under 14 in any theater or concert hall is not invalidly discriminatory because it excludes agricultural or domestic industries.

One employed in the stable area of a race trace is employed in connection with a place of amusement within the meaning of a child labor law forbidding the employment of children under 14 in such places. A statute forbidding night work by children has been held applicable to the employment within the state of nonresident child actors under an employment contract made out of state. However, a child violinist's theater appearance, in an act owned and directed by his mother, has been held not in violation of a statute prohibiting the employment of children under 14 in any place of amusement. However, the court declared that

nothing in the statute should be construed as prohibiting any child from working in any establishment or occupation operated by his parents.

In some states a statute makes it a misdemeanor for the custodian of a child under the age of 14 to dispose of the child with a view to the child being employed as an acrobat, a gymnast, a contortionist, a circus rider, a rope walker, or "in any exhibition of like dangerous character," or for any person to take, receive, employ, use, exhibit, or have in custody any child of such age for any of the purposes thus enumerated. Such a statute was designed for the protection of children, and it rests upon the power of the state, acting as parens patriae, to protect the physical, mental, or moral well-being of children. It has been held that the statute is limited to dangerous acrobatics, since the phrase "any exhibition of like dangerous character" directly qualifies the enumerated acts preceding it. Under this construction of the provision, the statute does not cover activities such as simple tumbling, which are not in themselves of a dangerous character. To support a conviction thereunder, the prosecution must prove acts of recklessness which endanger life or limb. Thus, it has been held that where the performances in question consisted merely of tumbling exhibits, body-supporting exhibits, and pyramids, and no apparatus, equipment, or

swings were used in the act and there is nothing in the record to establish danger to life or limb, the evidence is insufficient to support a conviction under the statute.

A state statute prohibiting boys under 12 and girls under 18 from selling any articles of merchandise or exercising any other trade in any street or public place, and prohibiting any parent, guardian, or custodian of a child who sells religious periodicals on the street. A state statute forbidding the employment of minors in street occupations has been held not invalid as local or special legislation even though it is applicable only in more populous cities.

A statute providing that boys under 10 and girls under 16 shall not sell or offer for sale any periodicals or merchandise in any street or public place has been held inapplicable to sales of religious magazines published by a religious organization, where there is a negligible profit motive and the sale of the magazines is regarded by members of the sect as a form of preaching. However, sales of the same magazine by members of the same sect have been held more recently a violation of a state statute forbidding children to sell magazines in any street or public place.

A state may prohibit the employment of children in dangerous occupations. A statute forbidding the employment of children under 16 in any business dangerous to the life

and limb of a child is not unfairly discriminatory in excluding from the statute the employment of children as singers or musicians in churches, schools, or academies. A statute forbidding the employment of children in any employment "dangerous" to their lives or limbs is not unconstitutionally vague because of the difficulty of determining whether a particular occupation is dangerous. Moreover, a state may constitutionally require an employer, before he employs a minor in a particular occupation, to obtain a health officer's opinion that the occupation is not dangerous.

Under a statute forbidding the employment of children in any employment which may be considered dangerous to their lives or limbs, the question whether machinery is dangerous within the meaning of the statute has been held to be a question of fact unless it is obviously dangerous to life and limb. A freight elevator has been held to be a dangerous machine within the meaning of a statute prohibiting the employment of children in places dangerous to life and limb. Moreover, a statute forbidding employment of children at any occupation at any place dangerous or injurious to life, limb, health, or morals has been held applicable to such work even if performed on a farm.

Statutes forbidding the employment of minors under 16 in operating carding machines have been hald valid.

But under a statute providing that no minor shall be "required" to work between the fixed or traversing parts of a machine, a minor's voluntarily taking work between the parts of a machine, uncontrolled by an insistence of the employer, has been held not a violation of the statute.

Recommendations

In comparing the child labor laws of Mississippi with those of selected other states and with the case law on the national scene, it may be noted that the laws in Mississippi are more permissive of children working than often seems to be the case. As one reads the Mississippi laws on the subject in comparison with the laws of selected other states, several points come to mind, including:

1. Should the basic age of employment be raised from 14 to, say, 16?

2. Should children of 14-16 be permitted to work as much as 44 hours per week?

3. Should those who work at night be permitted to work as much as 11 hours and 45 minutes per night, up to 60 hours per week?

4. Should railroads and public service corporations be excluded from the provisions of the child labor laws?

5. What is the status of the section requiring compliance with the compulsory attendance law?

6. Is the penalty for violation of orders sufficient?

7. Is the penalty for violation of the law sufficient?

8. Is the sheriff the proper enforcement officer?

9. Are the terms "mill," "cannery," "workshop," "factory," and "manufacturing establishment" sufficiently well-defined?

10. Should additional places or conditions of employment be included, such as in stores and shops, in heavy construction, in bowling alleys and pool rooms, around alcoholic beverages, in theaters and other places of public amusement, in the operation of cars and trucks, in restaurants, in hotels and motels, in tunnels and excavations, in offices, in street sales, in garages, on scaffolding, in the repair and maintenance of buildings, in mental institutions and prisons, around explosives and chemicals, and so on?

Accordingly, it is recommended that a new child labor law, or substantial amendments to the present laws, be enacted to cover the following:

1. No child under the age of 14 shall be employed or permitted to work at any gainful occupation at any time, except for newspaper carriers and baby sitters, in agricultural labor, as a caddy, in domestic work, or in yard work, and these may be permitted only during such times as the child's school is not in session.

2. A child from 14 to 16 inclusive may obtain a work

permit, perhaps in a manner similar to the present provisions; however, certain types of work or work under certain conditions should be prohibited. Work permits should not be valid during hours when the child's school is in session, except for agricultural labor and in cases of hardship. Work permits would not be needed for agricultural labor, for newspaper carriers, baby sitters, in domestic work, in yard work, in household chores, or as a caddy.

3. A child under 16 shall not be permitted to work more than eight hours a day; six days a week; 40 hours in a week; nor before 7:00 a.m. nor after 10:00 p.m. These restrictions would not apply to newspaper carriers, baby sitters, agricultural labor, in domestic work, in household chores, or in yard work.

4. Exceptions to the law should be made for students who are employed by the school at which they are attending, including in the school cafeteria, as a custodian or maintenance person, in connection with school buses, or in a clerical position. Further exceptions should be made for students who are enrolled in a distributive education, diversified occupations, trades and industries, or other work-study program under the supervision of the school.

5. Minors under 16 should not be permitted to work in certain occupations or under certain conditions, including the existing requirements in Mississippi, and further including

around power driven machinery; in the oiling, cleaning, and washing of machinery; upon any scaffolding; in or about any mine, quarry or pit; around cutting, polishing, and grinding machinery; around explosives; in the operation of any automobile, truck, or motor vehicle, except for farm machinery; in or around any place where the heating, mounting, or heating treatment of metals is carried on; in the operation of machinery for shaping, punching, shearing, or bending of metal stock; in the operation of power-driven woodworking machines; in or about saw mills and other wood processing plants; in the operation of any hoisting machines, including freight elevators; in occupations involving exposure to radioactive substances, dangerous chemicals, dust, poisons, leads, paints, and dyes; as a bellhop; in or about any pool room, billiard hall, or bowling alley; in any place where alcoholic beverages are served or sold for consumption on the premises, or in which intoxicating liquors are manufactured or bottled; as a waiter or waitress; in tunnels or excavations; in the sale, on a public street, of merchandise other than agricultural products; in the repair of moving parts of an automobile, truck, or other vehicle; in mental institutions and prisons; in places of public amusement other than as an usher or at a concession stand; or in any other occupation which may be found by the county health officer or state board of health to be dangerous to the life or limb, or injurious to the health or morals of such minors.

6. The enforcement of the law should be broadened to include not only the sheriff, but any peace officer. The county health officer should have not only his present authority in such matters, but should have the authority to require any peace officer of the state to perform the job now delegated to the sheriff. A similar authority should be granted to the state health department.

7. The penalties for violation of orders and for the violation of provisions of the law should be raised, especially the possible fine.

NOTES

(1) Hartwell Handle Co. v Jack, 149 M 465, 115 So 586.

(2) Buckeye Cotton Oil Co. v State, 103 M 767, 60 So 775.

(3) Handy v Merchantile Lumber Co., 121 M 489, 83 So 674.

(4) Graham v Goodwin, 170 M 896, 156 So 513.

(5) Anderson Mfg. Co. v Wade, 151 M 820, 119 So 313.

(6) Lopanic v Berkeley Cooperative Gin Co., 191 So 2d 108.

(7) Taken from 64 Am Jur 2d. Sections 1866-1874.